Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 7 NOVEMBER 7, 1973 No. 45

This issue contains

T.D. 73-300

C.D. 4473 and 4474

Protest abstracts P73/887 through P73/901

Reap. abstracts R73/294 through R73/303

Tariff Commission Notices

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 73-300)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., October 19, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

Hong Kong dollar:	*Official*	*Free*
September 24, 1973	$0.1950	$0.195312*
September 25, 1973	.1950	.195694*
September 26, 1973	.1950	.195694*
September 27, 1973	.1950	.195790*
September 28, 1973	.1950	.195886*

Iran rial:	
October 8, 1973	Holiday
October 9, 1973	$0.0150
October 10, 1973	.0150
October 11, 1973	.0148
October 12, 1973	.0148

Philippine peso:	
October 8, 1973	Holiday

For the period October 9 through October 12, 1973, rate of $0.1480.

*Certified as nominal.

Singapore dollar:

October 8, 1973	Holiday
October 9, 1973	$0.4270
October 10, 1973	.4280
October 11, 1973	.4270
October 12, 1973	.4270

Thailand baht (tical):

October 8, 1973	Holiday

For the period October 9 through October 12, 1973, rate of $0.0495.

(LIQ-3-0:A:E)

JOHN D. ROBISON,
Acting Director, Appraisement and Collections Division.

ERRATUM

In the Customs Bulletin and Decisions of October 3, 1973, Vol. 7, No. 40, the following change should be made:

Treasury Decision 73–262(31) should read as follows:

T.D. 73–262(31) *Textile materials. Typewriter ribbon.*— Typewriter ribbon imported in bulk, containing a black solvent track for typing and a white track for corrections, made from a solid polyester strip which is over 0.06-inch but not over 1 inch in width, and over 0.01-inch in thickness, in chief value of the polyester strip, is classifiable under the provision for articles nspf, of textile materials, * * * other, in *item 389.60*, TSUS. Bureau letter dated April 9, 1973. (418.44)

Decisions of the United States Customs Court

Protest Decisions

(C.D. 4473)

RUTH MILLER, Executrix of the Estate of GUY HOMER MARKHAM JEFFREY aka MARK JEFFREY A/C BURNS & TOWNE WEST, INC. *v.* UNITED STATES

Notice of appraisement

SERVICE BY MAIL—PRESUMPTION OF DELIVERY—EVIDENCE OF NON-RECEIPT

The importer-broker claimed that notice of appraisement was not given as required by 19 U.S.C.A. § 1501. Evidence adduced at the

trial by employees of the importer-broker of the non-receipt of notices of appraisement in the broker's incoming mail, or their failure to find the disputed notices after searches of the firm's files and desks, and of the broker's agitated behavior upon being first informed of the existence of said notices by customs personnel.

Held, sufficient to rebut the presumption that the disputed notices were received, arising from the Government's evidence that a properly addressed and franked envelope containing the notices were picked up by the postman from an outgoing mail receptacle.

Court No. 71–11–01775

Port of Los Angeles — Long Beach

[Judgment for plaintiff.]

(Decided October 11, 1973)

Stein & Shostak (*Leonard M. Fertman* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise covered by the entries in this action was advanced in value upon appraisement following entry at the port of Los Angeles-Long Beach, Calif. in 1969. It is alleged in the complaint that the appraisement and liquidation of the subject entries are null and void because notice of appraisement was not given in accordance with 19 U.S.C.A., section 1501 (section 501, Tariff Act of 1930, as amended).[1]

The involved entries were made in the name of plaintiff-customs broker Mark Jeffrey (who died prior to trial and was substituted for by Ruth Miller, the executrix of his estate) for the account of Burns & Towne West, Inc. The issue here is whether notice of appraisement was given by mail to the customs broker on May 4, 1970, the date the Government is said to have mailed the alleged notice of appraisement. Four witnesses gave testimony on this issue at the trial.

Karen Yost testified that on or about May 4, 1970, she was working for plaintiff Mark Jeffrey, that her job consisted of doing the book-

[1](a) The collector shall give written notice of appraisement to the consignee, his agent, or his attorney, if (1) the appraised value is higher than the entered value, or (2) a change in the classification of the merchandise results from the appraiser's determination of value, or (3) in any case, if the consignee, his agent, or his attorney requests such notice in writing before appraisement, setting forth a substantial reason for requesting the notice. The decision of the appraiser, including all determinations entering into the same, shall be final and conclusive upon all parties unless a written appeal for a reappraisement is filed with or mailed to the United States Customs Court by the collector within sixty days after the date of the appraiser's report, or filed by the consignee or his agent with the collector within thirty days after the date of personal delivery, or if mailed the date of mailing of written notice of appraisement to the consignee, his agent, or his attorney. Every such appeal shall be transmitted with the entry and the accompanying papers by the collector to the United States Customs Court.

keeping, handling the incoming mail, and general duties, that it was her responsibility to open mail delivered by the postman or picked up at the post office and give it to either Lynnette Keffer or Mr. Jeffrey, and that with respect to customs form 5561 [Notice of Appraisement] she would give them to Lynnette Keffer, unless they pertained to Burns & Towne West entries, in which case she would give them to Mr. Jeffrey.

Upon being shown the entries at bar, the witness testified that she was familiar with them, had no recollection of ever receiving notice of appraisement on these entries, and that at the request of Mr. Jeffrey she had participated with other employees in the office in an unsuccessful search of files and desks to find notices of appraisement relating to these entries—the search being conducted after bills for increased duties on the entries had been received from customs.

Lynnette Keffer testified that on or about May 4, 1970, she was in the employ of plaintiff Mark Jeffrey handling almost all incoming shipments, working them up, typing entries, and overseeing the general customs work and correspondence related to entries, and that she was familiar with the entries involved in this case, having typed them up. As to these particular entries she testified (R. 21–22):

> Q. Now, at sometime while you were working with Mark Jeffrey, did Mr. Jeffrey ask you whether or not you had ever received a notice of action, 5561, from customs, or from soneone [sic] in the office, on these four particular entries?—A. When he got the increases for them, he kind of hit the ceiling, and got everybody in one room and started having a fit and had everybody search their own desk and start looking through Burns and Towne files to see if we could find one because he talked to customs and they said they had sent one. And we couldn't find one for those entries.
>
> Q. What was your examination, in that case?—A. I looked through my entire office and went with Mark and went through many of the Burns and Towne files that did have notices in them and checked the numbers to make sure they were in the right file.
>
> Q. And in no instances did you find notices of action for these four entries?—A. No, not for the large penalties.
>
> Q. The increases?—A. No.

On cross-examination of the witness it was brought out that Mr. Jeffrey had been expecting some increases on the Burns & Towne entries, and, therefore, had undertaken to handle these cases personally. Consequently, the witness Keffer had not, since February, 1970, received on her desk notices of appraisement relating to any Burns & Towne entries.

This was the substance of plaintiff's evidence, at the conclusion of which, defendant moved to dismiss the action on the ground that plaintiff failed to establish a *prima facie* case in that plaintiff had

failed to prove non-receipt of notice of appraisement affecting the entries at bar. The court denied the motion, whereupon, defendant called its witnesses to give testimony in the case.

Virginia Noordweir testified that in May, 1970, she was an import specialist, that she is familiar with the copies of customs form 5561 attached to entries at bar, that she typed them in accordance with responsibility assigned by Mr. Ramsdell to the senior import specialist to type notices of appraisement, and that after typing them she secured them to the entries and gave them to the document control clerk, Florence Schow, who is now Mrs. Beck. The witness further testified (R. 28–29):

> Q. Now, after you gave these particular 5561's to Mrs. Schow, did something subsequently happen?—A. Yes.
>
> Q. And what was that, please?—A. She brought back—keep in mind we were dealing with 20 to 25 entries, of which I had plotted the liquidation process and typed up notices on all of them. She brought back a dozen to 20 and pointed out to me that I had, in error, typed Burns and Towne West as the importer of record when, in fact, Mark Jeffrey was the importer of record on these particular entries.
>
> Q. Who crossed out the name Burns and Towne West on these?—A. Mrs. Schow.
>
> Q. And who typed in Mark Jeffrey?—A. Mrs. Schow.
>
> Q. That's the same Mrs. Schow that was responsible for mailing, is that corect?—A. Right.

Florence Beck testified that she was working for customs, air transportation, in May, 1970, and her name at that time was Mrs. Schow. The witness was shown the copies of customs from 5561 attached to entries at bar and identified her initials F. S. on them. She testified that she had sole responsibility from Mr. Ramsdell to mail notices of appraisement to importers of record. She stated in substance that, as to the entries at bar, she corrected the 5561's by crossing out the name and address of Burns & Towne West and typing in the name of Mark Jeffrey. In the place for an address on the yellow copy of the notice in the official papers file the following appears:

> Mark Jeffrey
> ~~Burns and Towne West, Inc.~~
> ~~1232 W. Collins Avenue~~
> ~~Orange, California~~

It is noted that after striking the name and address of Burns & Towne West, Inc., the name Mark Jeffrey, without any address, was substituted. However, Mrs. Beck testified that she used a non-window type envelope, typed the name and address of Mark Jeffrey on said envelope, that she gave the 5561's having Mark Jeffrey's name, without an ad-

dress, in triplicate to Mr. Ramsdell who signed and returned them to her, that she separated the copies and placed the white and blue copies in the typed out envelope, that on May 4, 1970, before 9:30 a.m. she placed the sealed envelope containing these 5561's in an outgoing mail receptacle maintained in her office by Customs for this purpose, that on the same day she date stamped and certified as to the mailing of these 5561's on the retained yellow file copies, and observed a postal clerk from the post office not more than 3 feet away from her pick up all of the outgoing mail from this receptacle at about 9:30 a.m., leaving nothing behind.

This is the substance of defendant's evidence. At the conclusion of the case defendant renewed its motion to dismiss the action previously made at the conclusion of plaintiff's case. The motion was again denied by the court. In this connection the court stated (R. 49):

> JUDGE RICHARDSON: I think there are sufficient deviations from the normal procedure of handling the notices of appraisement to warrant the case's being submitted on its merits and the motion to dismiss will be denied.

Plaintiff argues that the alleged notices of appraisement at bar are defective on their face in that they lack a designation of the address of the notice Mark Jeffrey, and, therefore, cannot constitute legal notice of appraisement, citing the cases of *Mr. Roy Jennings, J. T. Steeb & Company, Inc.* v. *United States*, 63 Cust. Ct. 313, C.D. 3914 (1969), and *Astra Trading Corp.* v. *United States*, 52 Cust. Ct. 31, C.D. 2430 (1964). Plaintiff also argues that its proof of non-receipt of the notices in dispute, together with evidence of defendant's failure to "mail" the notices, establishes that the required notice has not been given in this case, citing *United States* v. *International Importers, Inc.*, 55 CCPA 43, C.A.D. 932 (1968), *Orlex Dyes & Chemicals Corporation* v. *United States*, 41 Cust. Ct. 168, C.D. 2036, 168 F. Supp. 220 (1958), and *Clayton Chemical & Packaging Co.* v. *United States*, 38 Cust. Ct. 617, Reap. Dec. 8774, 150 F. Supp. 628 (1957).

Defendant responds to plaintiff's first argument by stating that the name and address of Mark Jeffrey were typed on the envelope in which the notices substituting the name of Mark Jeffrey for Burns & Towne West, Inc. were mailed to him, and that the *Jennings* and *Astra Trading* cases cited by plaintiff are distinguishable from the facts at bar. Defendant also contends that its evidence of delivery of the disputed notices to the postman supplied the requisite proof of "mailing", citing *Rosenthal* v. *Walker*, 111 U.S. 185 (1884), and that, in the absence of testimony from the decedent Mark Jeffrey, plaintiff's evidence is insufficient to establish non-receipt of notice of appraisement, citing *United States* v. *Getz Bros. & Co.*, 55 CCPA 90, C.A.D. 938 (1968).

The court is of the opinion that the *Jennings* and *Astra Trading* cases are distinguishable from the instant case on the facts. The *Jennings* case involved a notice containing dual names and addresses on its face that postal regulations condemned as rendering the notice unacceptable for mailing in a window-type envelope, and also involved a Government concession of inadvertence on the part of Customs employees in improperly addressing the envelope containing the notice.

The *Astra Trading* case was decided upon the "irregularities", under the customs regulations, in the preparation and handling of the notice of appraisement prior to reaching the issue of delivery of the notice, which deprived it of the usual presumption of regularity.

On the main point in this case, namely, whether notice of appraisement was given, the court is of the opinion that defendant's proofs are sufficient to establish that the notice was "mailed" to plaintiff Mark Jeffrey. The reasonable inference to be drawn from the evidence of record is that the notices without an address were placed in a franked, return addressed envelope addressed to Mark Jeffrey at his address, and sealed and picked up by the postman at the airport section of the Customs.

In *Rosenthal* v. *Walker*, *supra*, the Supreme Court of the United States stated the applicable rule in such cases as follows (p. 193):

> The rule is well settled that if a letter properly directed is proved to have been either put into the post office or delivered to the postman, it is presumed, from the known course of business in the post office department, that it reached its destination at the regular time and was received by the person to whom it was addressed. *Saunderson* v. *Judge*, 2 H. Bl. 509; *Woodcock* v. *Houldsworth*, 16 M. & W. 124; *Dunlop* v. *Higgins*, 1 H.L. Cas. 381; *Callan* v. *Gaylord*, 3 Watts. 321; *Starr* v. *Torrey*, 2 Zabr. 190; *Tanner* v. *Hughes*, 53 Penn. St. 289; *Howard* v. *Daly*, 61 N.Y. 362; *Huntley* v. *Whittier*, 105 Mass. 391. . . .

Thus, properly addressed letters *delivered to a postman* come within the rule effecting delivery by means of the mails.

And the *Orlex Dyes* and *Clayton Chemical* cases do not espouse a different rule since, in neither case, was the person to whom the notices were delivered a United States "postman" as in the instant case. In those cases the deliveree was either an employee of the customs service or was a "messenger".

But the Government's proof of the mailing of the notices in dispute here does not conclude the matter. The ultimate question here is whether notice of appraisement was received by plaintiff Mark Jeffrey. *United States* v. *International Importers, Inc.*, *supra*. As our appeals court pointed out in the *International Importers* case:

> Congress in providing for a written notice of an increase in appraisement under facts such as those here present, clearly in-

> tended that *express* notice be given to the importer. . . . [55 CCPA at 47. Emphasis quoted.]

Hence, proof of mailing raises a presumption of delivery which may be rebutted by evidence of non-receipt.

In the instant case persons in the employ of plaintiff Mark Jeffrey during the critical period have testified as to the non-receipt of the notices in dispute in the mails, of their failure to find them after engaging in searches of appropriate firm files, and of their employer's expectations of receiving the notices, as well as of his surprise over being informed by customs personnel that notices had been mailed to him.

The employees who testified in the case were in privy with the broker in the company's handling of the files to the extent that one of them was in charge of receiving and distributing all incoming mail, including any notices of appraisement relating to these files, and both of them were engaged in searches of these files for the missing notices at their employer's request. As such, the broker's employees could give competent evidence of their involvement with the files in question and of their employer's behavior concerning notices of appraisement affecting these files. The broker's conduct itself is evidence indicative of the non-receipt of the disputed notices.

Therefore, under all of the circumstances in this case, the court is inclined to the view that there is sufficient evidence in the case which establishes that the disputed notices were not received by plaintiff Mark Jeffrey, warranting the conclusion that notice of appraisement was not given in this case.

The case of *United States* v. *Getz Bros. & Co.*, *supra*, does not, in the court's opinion, compel a different conclusion on the facts developed in this record. In the *Getz* case a file clerk in the broker's employ was the sole witness on behalf of the plaintiff who unsuccessfully challenged the giving of notice of appraisement. The file clerk did not receive the incoming mail which went directly to the company president. Also, there was no evidence in that case that the president's quarters were searched for the missing notices, or of his practice in handling notices received by him. And there was in that case the unlikelihood of notices dated on three different dates in a period of 19 days all going astray. Thus, the facts in *Getz* are significantly different from those at bar where the recipient of incoming mail is a witness in the case, searches of company files were made, and the disputed notices appear to have been mailed in one envelope.

For the reasons stated, the claim in the complaint that the appraisement and ensuing liquidation are null and void for want of giving of notice of appraisement is sustained.

Judgment will be entered herein accordingly.

(C.D. 4474)

THE FIRESTONE TIRE & RUBBER COMPANY v. UNITED STATES

ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Court Nos. 72-5-01060 and 72-9-01969

Port of Champlain – Rouses Point

[Plaintiff's motion granted; defendant's motion denied.]

(Dated October 11, 1973)

Kirkland, Ellis & Rowe (Perry S. Patterson of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*Frank J. Desidcrio*, trial attorney), for the defendant.

NEWMAN, Judge: In these consolidated civil actions, the parties agree that there is no genuine issue as to any material fact, and they have filed cross-motions for summary judgment pursuant to rule 8.2.

The imported merchandise consists of so-called top and bottom domes for premix soda syrup containers manufactured in the United States by a Division of Firestone, and then shipped to Uniroyal, Ltd. in Montreal, Canada (Uniroyal). At Uniroyal, by the application of a rubber coating, a shock resistant quality was imparted to the domes. Thereafter, they were returned to Firestone in the United States for completion of manufacture.

Plaintiff claims that upon importation of the domes from Canada the provisions of item 806.30 of the Tariff Schedules of the United States (TSUS) were applicable. Item 806.30 reads as follows:

806.30	Any article of metal (except precious metal) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing----------	A duty upon the value of such processing outside the United States * * *

Plaintiff asserts that the domes were subjected to "further processing" outside the United States within the meaning of item 806.30 by virtue of the rubber coating operation at Uniroyal. Thus, insists plain-

tiff, the entries should have been liquidated upon merely the value of the processing outside the United States, in accordance with item 806.30, rather than upon the full appraised value of the imported articles, as liquidated by the Government.

Defendant contends that the domes were not subjected to "further processing" in Canada within the purview of item 806.30, TSUS; and that consequently, the imported articles were properly assessed with duty by the district director in accordance with their full appraised value.

The sole issue to be determined on these cross-motions is whether plaintiff's domes were subjected to "further processing" outside the United States within the meaning of item 806.30, TSUS.[1]

For the reasons stated hereinafter, I have concluded that the rubber coating operation at Uniroyal in Canada meets the requirements of "further processing" under item 806.30, TSUS; and that item 806.30 was applicable in the liquidation of the entries covered by these civil actions. Accordingly, plaintiff's motion for summary judgment is granted; defendant's cross-motion is denied.

As provided in rule 8.2(f), plaintiff has submitted a supporting affidavit executed by an official at Uniroyal which describes the rubber coating operation.[2] The pertinent portion of that affidavit states:

> The manufacturing process done in Canada to the stainless steel top and bottom domes for premix syrup containers of Firestone identified in paragraphs 2 and 10 of its Complaint commenced with the domes being subjected to an acid pickling process designed to alter chemically the exterior surface of the domes. Once the surface was chemically altered, two different coats of special adhesive were then applied to the domes. A measured amount of special rubber formulation in the form of a cylindrical slug was then placed with the dome in a mold within a steam heated press. The mold was closed and, under heat and pressure, the rubber and the adhesive were vulcanized in the stainless steel domes.

With this background in mind, we reach the specific legal issue involved in these actions: whether or not the words "further processing" in item 806.30 encompass the rubber coating operation at Uniroyal, as described *supra*.

Paragraph 1615(g)(2), Tariff Act of 1930, as amended, the predecessor provision to item 806.30, contained the phrase "further processing" which was construed recently by our appellate court in *Intelex Systems, Inc.* v. *United States*, 59 CCPA 138, C.A.D. 1055 (1972). That

[1] Hence, there is no dispute between the parties that the domes were metal articles manufactured in the United States, or that they were returned to the United States for processing, as also required by item 806.30, TSUS. Moreover, affidavits submitted by plaintiff established those facts.

[2] The expression "rubber coating operation" where used in this opinion refers to all of the processes performed by Uniroyal, as described in the supporting affidavit.

case involved copper wire and insulating paper manufactured in the United States and exported to Spain where certain operations were performed resulting in lead-covered telephone cable. Such telephone cable was then imported into the United States on cable rolls and supplied to a contractor who was installing communications equipment. The sole issue was whether the telephone cable was "returned to the United States for *further processing*" (emphasis added) within the meaning of paragraph 1615(g)(2)(B). The appellate court determined that the cable was a completed article when it was returned to the United States, and that the operations performed on the cable at the installation site by the installing contractor did not constitute "further processing" within the purview of paragraph 1615(g)(2)(B).

Respecting the construction of the words "further processing", the appellate court stated (59 CCPA at —):

> We have considered the numerous cases cited by the importer and the Government which have interpreted the words "process" or "processing." While those interpretations are helpful in a general sense, we are not really concerned with the meaning of "processing" in a vacuum, in the abstract, or in other contexts unrelated to those at bar. Rather, its meaning must be controlled by the particular context in which it is used here and the legislative intent. *Fleming* v. *Hawkeye Pearl Button Co.*, 113 F. 2d 52, 57 (8th Cir. 1940). When we look to the context of ¶ 1615(g)(2), we do not think that Congress had in mind that any and all kinds of "processing" taking place upon return of an article to the United States would suffice to bring the article within the purview of that paragraph. Instead, we believe that the words "further processing" related to the kind of processing to which the article had been subjected before—namely, "a process of manufacture," as expressed in ¶ 1615(g)(2)(A). We continue of the view that Congress used "the expression 'subjected to a process of manufacture' as synonymous with 'processing' ", *A. F. Burstrom* v. *United States*, 44 CCPA 27, CAD 631 (1956), and that the "further processing" referred to in ¶ 1615(g)(2) is a further manufacturing process.

Although the sole issue decided in *Intelex* was whether the telephone cable was "returned to the United States for further processing",[3] in my view the above quoted construction by the appellate court is equally applicable to the words "further processing" as applied to the operations performed outside the United States. Therefore, the domes must have been subjected to a process of manufacture in Canada to come within the ambit of item 806.30, TSUS.

Plaintiff argues that, as shown by an affidavit, "the domes were subjected to a number of integrated manufacturing processes in Canada", viz., the rubber coating operation. I agree. It is defendant's position,

[3] As pointed out in footnote 1, defendant does not dispute that the domes were returned to the United States for processing, as required by item 806.30, TSUS.

however, that to come within the purview of item 806.30, TSUS, some process of manufacture comparable to machining, grinding, drilling, tapping, threading, punching, or forming must be performed on the metal itself. Defendant urges that these enumerated operations were the types of "further processing" contemplated by Congress in item 806.30, and that the rubber coating operation performed by Uniroyal in Canada was not comparable to any of the above enumerated operations.

Defendant's position is without merit. Significantly, no legislative history or other judicially recognized authority is cited by defendant which supports its highly restrictive interpretation. Moreover, if Congress had intended the meaning advocated by defendant, surely such intent would have been plainly indicated. Therefore, the provision was intended, I think, to be more comprehensive than defendant's interpretation and certainly includes the manufacturing operation performed by Uniroyal in this case.

Defendant also cites the following cases for the well established principle in customs law that the mere cleansing of an article, or "getting it by itself", is not a manufacturing process. *Passaic Worsted Co. et al.* v. *United States*, 17 CCPA 459, T.D. 43916 (1930) (cleaning of wool); *Woolart Mills, Inc.* v. *United States*, 58 Cust. Ct. 450, C.D. 3018, 269 F. Supp. 381 (1967) (silk cleaning); *George Beurhaus Co. et al.* v. *United States*, 32 Cust. Ct. 269, C.D. 1612 (1954) (removal of pumpkin seed kernels from their pods).

The foregoing decisions are inapposite here. Even granting that the acid pickling process at Uniroyal was "in the nature of a cleansing operation", as asserted by defendant,[4] the additional processes of applying a special adhesive and coat of rubber also must be considered in determining whether the domes were subjected to "further processing."

In summary, I find that there is no genuine issue of fact to be tried in this case, and that as a matter of law the articles in issue were further processed outside the United States within the purview of item 806.30, TSUS, as claimed by plaintiff. Accordingly, it is hereby

ORDERED that the plaintiff's motion for summary judgment be and the same hereby is granted; and it is further

ORDERED that defendant's cross-motion for summary judgment be and the same hereby is denied; and it is further

ORDERED that the district director reliquidate the entities covered by these civil actions, and in so doing assess the appropriate rate of duty upon the value of the processing outside the United States in accordance with item 806.30, TSUS.

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[4] An affidavit submitted by plaintiff (quoted in part *ante*) indicates that the acid pickling process was "designed to alter chemically the exterior surface of the domes". The Government submitted no controverting affidavit. Consequently, there is no basis in fact for considering the acid pickling process used at Uniroyal to be merely a cleansing operation, as urged by defendant.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *October 15, 1973.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/887	Rao, J. October 9, 1973	American Feldmuehle Corp. Hensel Bruckmann & Lorbacher, Inc.	69/8945, etc.	Item 649.46 18.5% Item 536.11 36%	Item 535.41 12.5% or 11%	American Feldmuehle Corp. et al. v. U.S. (C.D. 4021)	New York Tool tip blanks, cutting tools, and similar articles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/888	Rao, J. October 9, 1973	Unitron Import Corp.	70/31300, etc.	Item 222.60 25% or 23%	Item 666.00 Free of duty	James S. Baker (Imports) Co. v. U.S. (C.D. 3619)	Portland, Oreg. Bamboo rakes, chiefly used as horticultural implements for care and maintenance of lawn
P73/889	Ford, J. October 9, 1973	Paillard, Inc.	70/44924	Item 676.23 10%	Item 676.20 8%	Agreed statement of facts	New York Calculating machines specially constructed for multiplying and dividing
P73/890	Maletz, J. October 9, 1973	Badger Tools & Manufacturing Co.	67/72821(B)	Item 646.92 17%	Item 692.27 8.5%	Gallagher & Ascher Co. v. U.S. (C.D. 3899)	New York Lock cylinder plugs
P73/891	Maletz, J. October 9, 1973	Sekisui N.Y Corp.	67/12847, etc.	Item 774.60 17%	Item 771.42 12.5%	Sekisui Products, Inc. v. U.S. (C.D. 3885)	New York Eslon PVC corrugated panels
P73/892	Re, J. October 9, 1973	Walker & Zanger, Inc.	68/11255	Item 727.40 17% (less 60% under T.D. 53965)	Item 202.53 5% (less 60% under T.D. 53965)	Pacific Hardwood Sales Co. et al. v. U.S. (C.D. 3960)	San Francisco Lauan drawer sides and backs
P73/893	Ford, J. October 10, 1973	Gambles Import Corp.	99/37888	Item 737.90 31%	Protest premature; appraisement and liquidation not in accordance with law; protest dismissed; district director to take appropriate action	United Merchandise Corp. et al. v. U.S. (C.D. 2313) Torch Mfg. Co., Inc. v. U.S. (C.D. 2863)	San Diego Cabin cruiser radios and batteries (separate tariff entities)

P73/894	Landis, J. October 10, 1973	Georg Jensen, Inc.	70/44030, etc.	Item 386.08 45%	Item 388.40 28.5%	Agreed statement of facts	New York Articles of textile materials, in c.v. of wool, not knit or of pile or tufted construction: not ornamented
P73/895	Watson, J. October 10, 1973	Rhodia, Inc.	67/69294, etc.	Item 427.52 3¢ per lb. and 15% or 2.4¢ per lb. and 12%	Item 425.24 10.5% or 8%	Agreed statement of facts	New York Methylimidazole, a nitrogenous compound of the type known as an imide
P73/896	Maletz, J. October 10, 1973	Baruch Petranker Import Co.	67/15133	Item 737.40 35%	Item 256.75 8.5%	Judgment on the pleadings Wilson's Customs Clearance, Inc. v. U.S. (C.D. 3061)	San Francisco Papier mache figures of animals with nodding heads
P73/897	Re, J. October 10, 1973	New York Merchandise Co., Inc.	69/46904, etc.	Item 772.06 13.5% plus 16.5¢ per lb.	Item 772.15 13.5%	Davar Products, Inc. v. U.S. (C.D. 3880)	San Diego Plastic snack sets
P73/898	Re, J. October 10, 1973	United Silver & Cutlery Co.	67/42822, etc.	Item 772.06 21¢ per lb. plus 17%	Item 772.15 17%	Agreed statement of facts	Los Angeles Mug sets in c.v. of plastic
P73/899	Ford, J. October 11, 1973	W. J. Byrnes & Co., Inc. Facit, Inc., et al.	63/4526, etc.	Par. 353 or 372 13% or 12 ½%	Par. 353 or 372 10½%	U.S. v. Air-Sea Forwarders et al. (C.A.D. 907)	San Francisco Adding or calculating machines
P73/900	Maletz, J. October 11, 1973	Baruch Petranker Import Co., Inc.	65/2730, 65/12191, 67/51831	Item 737.40 35%	Item 256.75 8.5%	Consent judgment Wilson's Customs Clearance, Inc. v. U.S. (C.D. 3061)	San Francisco Papier mache figures of animals with nodding heads
P73/901	Maletz, J. October 11, 1973	George S. Bush and Co., Inc.	69/2033, etc.	Item 708.09 42.5%	Item 722.50 35%	G.A.F. Corp. et al. v. U.S. (C.D. 4269)	Portland, Oreg. Small disks of heater filter glass

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/294	Ford, J. October 9, 1973	Westinghouse Electric Corp.	R70/3643, etc.	Constructed value	Equal to amounts indicated on schedule of cases attached to decision and judgment under the heading "Values"	Agreed statement of facts	New York Radios (some with instruction books styrofoam packing), earphones and batteries
R73/295	Richardson, J. October 9, 1973	Nikko Boeki Int'l., Inc.	72-7-01620	Constructed value	Protest 30011-000768 Radios: $10.17, each, net packed Earphones: $0.04, each, net packed Batteries: $0.12 net packed, per radio Protest 30012-000152 Radios: $4.84, each, net packed Earphones: $0.08, each, net packed Batteries: $0.12 a pair, or $0.06 each, net packed	Agreed statement of facts	Seattle Radios together with earphones and batteries

R73/296	Re, J. October 11, 1973	J. Wm. Back Co. et al.	R58/3972, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R73/297	Re, J. October 11, 1973	Geo. S. Bush & Co., Inc.	280873-A, etc.	Export value: Not appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R73/298	Re, J. October 12, 1973	The East Asiatic Co., Inc., et al.	R61/19217, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R73/299	Re, J. October 12, 1973	Pacific Wood Products, Co et al.	R60/9375, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R73/300	Re, J. October 12, 1973	Pan Pacific Overseas Corp.	R60/10543, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R73/301	Re, J. October 12, 1973	United States Plywood Corp.	298530-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R73/302	Re, J. October 12, 1973	United States Plywood Corp.	R58/643, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R73/303	Re, J. October 12, 1973	United States Plywood Corp.	R59/12907, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood

Judgment of the United States Customs Court in Appealed Case

OCTOBER 10, 1973

Appeal 74–9.—Harlo Expediters, Inc., and Walker Pen Company, Inc. *v.* United States.—MOTION TO COMPEL FILING OF COMPLAINT DENIED—ACTION DISMISSED FOR LACK OF PROSECUTION.—Order of dismissal of June 1, 1973 (not published). Appeal dismissed September 18, 1973.

Appeal to United States Court of Customs and Patent Appeals

Appeal 74–18.—Glenside Steel Company and Gerry Schmitt & Company *v.* United States.—SALVAGED STEEL, REAPPRAISEMENT OF. Appeal from C.D. 4466.

In this case imported steel products were salvaged from the hold of a German ship which sank in Lake Huron in 1966. The merchandise was appraised on the basis of export value as defined in section 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956. Plaintiffs-appellants agreed that export value was the proper basis of appraisement but contested the values determined by the Government. Alternatively, plaintiffs made claims on the basis of United States value and constructed value. The Court held that plaintiffs failed to overcome the presumption of correctness attached to the assessed valuations of the salvaged steel and to prove that their claimed values were correct. The appeals for reappraisement were dismissed and the appraised values affirmed.

It is claimed that the Customs Court erred in holding that the appraised values represented the export value of the subject merchandise; in not holding that the claimed value; i.e., salvage contract price of $25.51 per ton, f.o.b. Rockport, Michigan, represents the export value of the subject merchandise; in not holding that the claimed alternative value of $40 per ton represents the export value of the subject merchandise; in not holding that there is a separate, regular distinct market and market value for damaged or salvaged steel and in not holding that the importer established the true market value for the subject merchandise; in not holding that the merchandise was appraised as first quality (undamaged) merchandise; in not holding that the importer has overcome the presumption of correctness attaching to the appraisement and in not holding that the appraisement is erroneous; in not holding that, in the alternative, there was no export value for such or similar merchandise and that the resale contract price of

$35.53 per ton, less included duty, represents the United States value (section 402(c), Tariff Act of 1930, as amended) of the subject merchandise; in not holding that, in the alternative, there was no export value nor U.S. value for such or similar merchandise and that the entered value of $25.51 per ton, represents the constructed value (section 402(d), Tariff Act of 1930, as amended) of the subject merchandise; in not holding, based upon the extensive experience and expertise of the importer's witnesses regarding damaged steel, that steel submerged in polluted water for five to nine months would necessarily be damaged by rusting and pitting and that experts would know the degree of such damage; in not holding that the manner in which this merchandise was sold (auction attended by dealers in damaged steel) would necessarily lead to the true market value of the merchandise; and in not holding that the importer sustained its dual burden of proof.

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *October 18, 1973.*

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs Officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[AA1921–132]

ACRYLONITRILE-BUTADIENE-STYRENE TYPE OF PLASTIC RESIN

Notice of investigation and hearing

Having received advice from the Treasury Department on October 5, 1973, that acrylonitrile-butadiene-styrene type of plastic resin (in pellet and powder forms) from Japan (except resin the product of Ube Cycon, Ltd.) is being, or is likely to be, sold at less than fair value, the United States Tariff Commission on October 15, 1973, instituted investigation No. AA1921–132 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. 20436, beginning at 10 a.m., E.S.T., on Wednesday, November 14, 1973. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon, Friday, November 9, 1973.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued October 15, 1973.

[337–L–67]

CERTAIN FLUID LOGIC CONTROLS

Notice of complaint received

The United States Tariff Commission hereby gives notice of the receipt on July 16, 1973, of a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), filed by The ARO Corporation of Bryan, Ohio, alleging unfair methods of competition and unfair acts in the importation and sale of certain fluid logic controls which are embraced within the claims of U.S. Patent Nos. 3,403,693; 3,385,-322; 3,389,720 and 3,419,032, all owned by the complainant, as well as made in accordance with certain unpatented designs and specifications developed by the complainant. Flick-Reedy Corporation, 7N015 York Road, Bensenville, Illinois, 60106, through its subsidiary, Miller Fluid Power, has been named as importing and offering for sale the subject product.

In accordance with the provisions of section 203.3 of its *Rules of Practice and Procedure* (19 C.F.R. 203.3), the Commission has initiated a preliminary inquiry into the issues raised in the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and if so, whether the Commission should recommend to the President the issuance of a temporary exclusion from entry under section 337(f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York office of the Tariff Commission located in Room 437 of the Customhouse.

Information submitted by interested persons which is pertinent to the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than November 29, 1973. Extensions of time for submitting information will not be granted unless good and sufficient cause is shown thereon. Such information should be sent to the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C. 20436. A signed original and nineteen (19) true copies of each document must be filed.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued October 15, 1973.

[AA1921–133]

METAL PUNCHING MACHINES, SINGLE-END TYPE, MANUALLY OPERATED, FROM JAPAN

Notice of investigation and hearing

Having received advice from the Treasury Department on October 19, 1973, that metal punching machines, single-end type, manually operated, from Japan are being, or are likely to be, sold at less than fair value, the United States Tariff Commission on October 18, 1973, instituted investigation No. AA1921–133 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. 20436, beginning at 10 a.m., E.S.T., on Monday, November 19, 1973. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon, Wednesday, November 14, 1973.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued October 18, 1973.

[AA1921–134/135]

PRIMARY LEAD METAL FROM AUSTRALIA AND CANADA

Notice of investigations and hearing

Having received advice from the Treasury Department on October 10 and 11, 1973, respectively, that primary lead metal from Australia and Canada is being, or is likely to be, sold at less than fair value, the United States Tariff Commission on October 18, 1973, instituted investigations Nos. AA1921–134/135 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigations will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. beginning at 10 a.m., E.S.T., on Tuesday, November 27, 1973. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon, Thursday, November 22, 1973.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued October 18, 1973.

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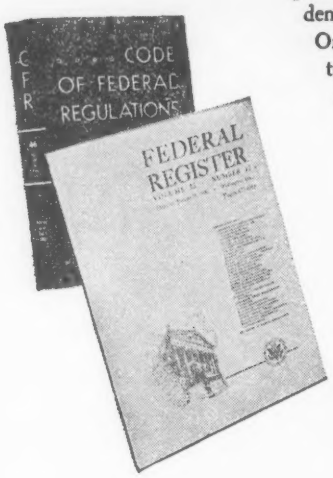

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